

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America,

Case No. 0:18-cr-00166-WMW-KMM

Plaintiff,

v.

Phillip Mark Reinhart,

ORDER ON  
NONDISPOSITIVE MOTIONS

Defendant.

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This matter is before the Court on the government's motion for discovery and Phillip Mark Reinhart's motions for disclosure, discovery, and inspection. The Court held a hearing on the motions on November 14, 2018. The Court enters the following Order resolving the parties' nondispositive motions.

1. Government's Motion for Discovery Pursuant to Federal Rules of Criminal Procedure 16(b), 12.1, 12.2, 12.3 and 26.2 [ECF No. 17].

The government's motion for discovery of information pursuant to Rule 16 of the Federal Rules of Criminal Procedure is **GRANTED**. The defendants shall provide discovery and disclosure as required by the Fed. R. Crim. P. 16. If Mr. Reinhart determines that he will offer expert testimony, he shall make expert disclosures **two weeks before trial**.

2. Mr. Reinhart's Motion for Pretrial Disclosure of 404(b) Evidence [ECF No. 18].

The motion is **GRANTED**. The government shall make the disclosures required by Federal Rule of Evidence 404(b) **two weeks before trial**.

3. Mr. Reinhart's Motion to Compel Attorney for the Government to Disclose Evidence Favorable to the Defendant [ECF No. 19].

Mr. Reinhart's motion for disclosure of information that must be provided to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny is **GRANTED**. These cases place an ongoing obligation on counsel for the government to gather and disclose evidence favorable to the defendant.

4. Mr. Reinhart's Motion for Discovery and Inspection [ECF No. 20].

Mr. Reinhart's motion for discovery and inspection pursuant to Federal Rule of Criminal Procedure 16 is **GRANTED**. The government shall continue to comply with its discovery and disclosure obligations. The government shall make expert disclosures in this case **three weeks prior to trial**.

5. Mr. Reinhart's Motion for Discovery and Inspection of Products and Records of Electronic Surveillance [ECF No. 21].

Mr. Reinhart's Motion for discovery and inspection of products and records of electronic surveillance is **GRANTED**. The government indicates that it has already disclosed all such evidence.

6. Mr. Reinhart's Motion for Early Disclosure of Jencks Act Material [ECF No. 22].

Mr. Reinhart's motion for early discovery of Jencks Act material is **DENIED**. The Jencks Act provides that the government "need not produce Jencks statements prior to a witness' testimony on direct examination." *United States v. Douglas*, 964 F.2d 738, 741 & n.2 (8th Cir. 1992) (citing 18 U.S.C. § 3500(b) and discussing the government's option to make earlier voluntary disclosure, such as through an "open file policy"). Nothing in this Order precludes the government from voluntarily disclosing Jencks Act material prior to witness testimony at trial, and the government has indicated its intention to do

so before trial in this case. The Court encourages the government to make such disclosure even sooner than the customary three days prior to trial to avoid unnecessary delays.

7. Mr. Reinhart's Motion for Government Agents to Retain Rough Notes and Evidence [ECF No. 23].

The motion is **GRANTED**. Disclosure of rough notes is not required pursuant to this Order.

IT IS SO ORDERED.

Date: November 14, 2018

*s/ Katherine Menendez*

Katherine Menendez

United States Magistrate Judge